IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.08.2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.R.P.NPD.NOS.1918 TO 1921 OF 2003,
34 TO 37 AND 256 TO 259 OF 2004
AND
C.M.P.NOS.2217 TO 2220 OF 2004

R.Jaffarullah .. Petitioners/ Landlord in CRPs.1918 to 1921 of 2003 and 34 to 37 of 2004

1.Siva @ Pradeep Kumar
2.Mahesh @ Hemand Kumar
3.Nagesh @ Lakshminarayanan .. Petitioners/ Tenant in CRP.256 of 2004

Muthuramalingam .. Petitioner/ Tenant in CRP.257 of 2004

Mohammed Hussain .. Petitioner/ Tenant in CRP.258 of 2004

Mohammed Rafiq .. Petitioner/ Tenant in CRP.259 of 2004

Vs.

Muthuramalingam .. Respondent / Tenant in CRP.1918 of 2003 and 34 of 2004

Mohammad Hussain .. Respondent / Tenant in CRP.1919 of 2003 and 35 of 2004

1.Mohammad Rabeek
2.Edayathulla .. Respondents/ Tenant in CRP.1920 of 2003 and 36 of 2004

1.Siva @ Pradeep Kumar
2.Mahesh @ Hemanandakumar
3.Nagesh @ Lakshmana Kumar .. Respondents/ Tenant in CRP.1921 of 2003 and 37 of 2004

Zabarulla .. Respondent/ landlord in CRPs.256 to 259 of 2004

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CRP Nos.1918 to 1921 of 2004 have been preferred under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control)

Act, 18 of 1960 against the fair and decretal orders made in RCA Nos.5,4,6 and 7 of 2003 on the file of the learned Principal Subordinate Judge (Appellate Authority), Mayiladuthurai, dated 18.9.2003, confirming the fair and decreetal orders made in E.P.Nos.15,14,16 and 17 of 2001 in RCOP Nos.22,24,27 and 29 of 1982 on the file of the learned District Munsif (Rent Controller), Sirkali, dated 4.2.2003.

CRP Nos.34 to 37 of 2004 have been preferred under Sections 25 of the Tamil Nadu Buildings (Lease & Rent Control) Act 18/60 as amended by Act 1/80 against the fair and decretal orders made in RCA Nos.10,11,12 and 13 of 2003 dated 18.9.2003 on the file of the learned Principal Subordiante Judge (Appellate Authority), Mayiladuthurai in confirming the fair and decretal orders made in IA Nos.3,4,5 and 6 of 2001 in RCOP Nos.22,24,27 and 29 of 1982 dated 4.2.2003 on the file of the learned District Munsif (Rent Controller), Sirkali.

CRP Nos.256 to 259 of 2004 have been preferred under Section 25 of the Tamil Nadu Buildings (Lease and Rent Control) Act, 18 of 1960 as amended by Act 23 of 1973 and Act 1 of 1980 against the fair and final orders of the learned Rent Control Appellate Authority (Principal Sub Court), Mayiladuthurai, dated 18.09.2003 made in RCA Nos.18,16,17 and 19 of 2003, confirming the fair and final order of the learned Rent Controller, Sirkali, dated 28.2.2003 made in RCOP Nos.17,18,10 and 9 of 1999.

For Petitioners : Mr.A.Muthukumar
in CRPs.1918 to 1921 of 2003
and CRPs.34 to 37 of 2004
Mr.S.Sounthar
in CRPs.256 to 259 of 2004

For Respondents : Mr.S.Sounthar
in CRP.1918 to 1921 of 2003
and CRPs.34 to 37 of 2004
Mr.A.Muthukumar
in CRPs.256 to 259 of 2004

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COMMON ORDER

This order shall govern 12 civil revision petitions, namely C.R.P.NPD.Nos.1918 to 1921 of 2003, 34 to 37 and 256 to 259 of 2004.

2.C.R.P.Nos.256 to 259 of 2004 have arisen from the judgments of the Rent Control Appellate Authority, Mayiladuthurai made in RCA Nos.18, 16, 17 and 19 of 2003, whereby the orders of eviction passed by the Rent Controller, Sirkali in RCOP Nos.17, 18, 10 and 9 of 1999 respectively were confirmed. The C.R.P.Nos.1918 to 1921 of 2003 have arisen from the judgment made by the appellate authority in R.C.A.Nos.5, 4, 6 and 7 of 2003, which arose from the orders made in E.P.Nos.15, 14, 16 and 17 of 2001 by the tenants

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and they were allowed. C.R.P.Nos.34 to 37 of 2004 have arisen from the judgment of the appellate authority made in RCA Nos.10, 11, 12 and 13 of 2003, which have arisen from the orders passed by the Rent Controller made in I.A.Nos.3, 4, 5 and 6 of 2001.

3.The short facts necessary for the disposal of the C.R.P.Nos.256 to 259 of 2004 can be stated thus:

The respondent in these civil revision petitions is the landlord in respect of the shop premises, which are let out to the revision petitioners, who are the tenants. All the tenants have been occupying the premises for carrying on their respective business. RCOP No.17 of 1999 was filed, alleging that the monthly rental was Rs.145/-. There was rental arrears to the tune of Rs.3770/- from January, 1997 to February, 1999 for a period of 26 months. So far as RCOP No.88 of 1999 was concerned, the tenant is in occupation of the building for carrying on business on a monthly rent of Rs.130/-. From January, 1995 to February, 1999 for a period of 50 months, there was rental arrears to the tune of Rs.6500/- and thus, it was a willful default and hence, he was to be evicted. In RCOP No.10 of 1999, the tenant was in default for the periods from July, 1997 to February, 1999 i.e. for a period of 20 months. The monthly rental was Rs.100/- and thus, he was to pay Rs.2000/- and for that willful default, he was to be evicted. In RCOP No.9 of 1999, the willful default committed by the tenant was from July, 1997 to February, 1999, i.e. for a period of 20 months at the rate of Rs.200/- per month and it was to the tune of Rs.4000/-. In all cases, it was alleged by the landlord that for the particular periods, he has issued receipts to the respondents/tenants and thereafter, packet notebook was maintained, in which on payment of rental, necessary endorsement was made by the landlord and the packet notebook is also with the custody of the tenants. In all the cases, the common defence plea was that there was no arrears of rental at all. They have made payments of rental then and there and the landlord was not in practice of issuing any receipt and thus, there was no arrears of rental at all. On enquiry, in all the RCOPs, eviction was order recording a finding that there was willful default on the part of the tenants. Therefrom, the tenants preferred RCA Nos.18, 16, 17 and 19 of 2003 and on enquiry, they were dismissed. Aggrieved the tenants have brought forth the above four civil revision petitions, as referred to above.

4.Advancing his arguments on behalf of the revision petitioners, the learned counsel would submit that in the instant case, the petitioner was examined as P.W.1; that he has categorically admitted that for a particular period, the receipt was issued and thereafter, there was endorsement made by him in Katchayat book, which was actually in the custody of the tenants, but they were all false; that the landlord admitted that he maintained a account book; that in order to prove the same, he has produced before the Court Ex.P.3, katchayat book, which according to the landlord maintained by him; that both the authorities below have relied on Ex.P.3, which never contained the signature of the

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tenants and hence, it was a self serving document and hence, the authorities below should have rejected the same. Added further the learned counsel that in the instant case, the civil revision petition was pending before the court in respect of the other relief sought for for carrying out the repairs; that pending civil revision petition, the RCOP for eviction on the ground of willful default was taken; that if to be so, the fact that the tenants are in arrears of rental should have been brought to the notice of the court, but not done so; and that this would be indicative of the fact that there was no arrears of rental at all.

5.Added further the learned counsel that in the instant case, originally, all the RCOPs were filed for the purpose of recovery of possession for doing repairs; that they were ordered and the RCAs at the instance of the respondents/tenants were dismissed; that thereafter, he has not followed the undertaking given; that all would go to show that if really the intention was to carry out the repairs, the landlord would have followed the procedures as one contemplated, but not done so; that this would go to show that there was no default at all; that the case of the landlord, according to the revision petitioners/tenants, is that in each case, there was rental arrears for a period of 15 to 20 months; that had it been true, having filed the petitions for delivery of property for the purpose of doing repairs, no landlord would have waited for a long period; that this would be indicative of the fact that there was no default at all; that the defence plea that the rental was paid without giving any receipt whatsoever was correct and it should have been accepted by the authorities below and all the civil revision petitions have got to be allowed by setting aside the orders of the authorities below.

6.In answer to the above, the learned counsel for the respondent would submit that in all the cases when it is alleged that packet notebooks were maintained and the endorsements were also made in the packet notebooks by the landlord and they were in the custody of the tenants, it should have been produced, but they have not done so and that once the tenants came forward to state that they have made payments of rental, it was for them to prove the fact, but not proved and hence, both the authorities below were perfectly correct in ordering eviction.

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7.After careful consideration of the rival submissions made, the court is of the considered opinion that in the instant case, the orders of eviction passed by the authorities below have got to be sustained. It is not in controversy that these petitioners before this court are the tenants under the respondent/landlord in respect of the shop premises mentioned in the respective petitions to carry on their business. In each case, there was rental arrears for 15 to 20 months, as stated in the petitions and as pointed out by the authorities below. The common defence plea was that the rental amounts were paid then and there, but no receipts were used to be given and under these circumstances, it has got to be accepted. The well settled proposition of law is that in a given case where the landlord came with the case that there was non

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payment of rental and willful default, a duty is cast upon the tenants to prove the payments of rental and the mere averments or statements by the tenants that they have made the payments in entirety or monthwise and there was no receipt used to be issued cannot be countenanced. If this contention is accepted in any case when the landlord comes with the petition for eviction on the ground of willful default or non payment of rental, the tenant would be allowed to make a easy walkover, stating that he has paid the rent every month and there was no receipt passed on and hence, it has got to be discountenanced.

8.Under these circumstances, in the instant case, the landlord has stated that packet notebook is maintained, in which he used to make endorsement, which is in the custody of the tenant and he has also given evidence before the court as P.W.1 that during a particular point of time, he used to give receipts and thereafter, a packet notebook was maintained, in which an endorsement is made and the same was in the custody of the tenants. He has also produced Ex.P.3, which was maintained by him. Quite naturally, it might not have contained the signatures of the tenants. The landlord has produced what was available with him and what was actually available with the tenants, namely the packet notebook with the endorsement of the landlord, was not produced by the tenants for the reasons best known to them. In a given case like this, when a duty is cast upon the tenant to prove the payment of rental, if not proved it has got to be inferable that the tenants have not made payments of rental. Under these circumstances, all the petitions were ordered correctly and the orders have got to be sustained.

9.In the instant case, the yet another circumstance noticed is that the landlord filed RCOP Nos.22, 24, 27 and 29 of 1982 under Section 14(1)(a) of the Act for the purpose of getting delivery of possession of the property for the purpose of repairing. Originally, all the RCOPs were allowed and following the same, four RCAs were taken out by the tenants and they were actually dismissed. From the dismissal orders, the tenants took it on civil revision petitions in CRP Nos.2986, 2988, 2992 and 2993 of 1986 and all the four civil revision petitions were actually dismissed by this court, pursuant to which E.Ps were filed by the landlord in E.P.Nos.188 of 1997, 1 of 1998, 192 and 189 of 1997, seeking delivery for the purpose of repairing. Accordingly, delivery was ordered on 5.1.1999. While the matter stood thus, he seeks police aid by way of filing an execution application. At that time, a memo was filed by the tenants, undertaking to deliver the possession to the landlord. Accordingly, the possession was handed over, pursuant to the memo dated 4.3.1999. Actually, the landlord took the possession of the property. Time was also granted to carry out the repairing work till 3.6.1999, but not done. Under these circumstances, the tenants filed E.P.Nos.15, 14, 16 and 17 of 2001 for redelivery. Accordingly, redelivery was ordered. Aggrieved the landlord took it on appeal in RCA Nos.5, 4, 6 and 7 of 2003 and all the RCAs were dismissed. Under these

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circumstances, C.R.P.Nos.1918 to 1921 of 2003, as referred to above, have been brought forth.

10.At this juncture, it is pertinent to point out that originally, all the RCOPs were filed in the year 1982 and it came upto civil revision petitions, which were disposed of in the year 1986. Under these circumstances, the execution petitions were filed in 1997. While the delivery was sought for in the execution petitions by the landlord, there is no reason for the tenants to make payment without any receipt or acknowledgement for payment of rental during the relevant period. They have actually delivered possession only on 4.3.1999. The period covered in the willful default, as referred to above, would cover the period when the execution petitions were filed for delivery in E.P.Nos.188 of 1997, 1 of 1998, 192 and 189 of 1997 till the delivery was given on 4.3.1999. This would be indicative of the fact that after delivery application was filed, they did not make payment of rental at all. Thus, the circumstances would indicate the non payment of rental during the relevant period. Under these circumstances, eviction order was passed by the Rent Controller, which was subsequently affirmed by the appellate authority and it has got to be confirmed. Accordingly, C.R.P.Nos.256 to 259 of 2004 are dismissed. No costs. Consequently, the connected CMPs are also dismissed.

11.So far as CRP Nos.1918 to 1921 of 2003 are concerned, the landlord had challenged the orders of delivery originally made by the Rent Controller, which was subsequently affirmed by the appellate authority in RCA Nos.5, 4, 6 and 7 of 2003. Those civil revision petitions do not require any consideration at this stage. Apart from that originally, the property was taken delivery by the landlord and the same was retained by him and no further consideration of redelivery would arise, since order of eviction has also been passed. Accordingly, CRP Nos.1918 to 1921 of 2003 are disposed of. No costs.

12.I.A.Nos.3, 4, 5 and 6 of 2001 were originally filed by the landlord for extension of time for giving redelivery of the property to the tenants, but the time was not extended and under these circumstances, he preferred RCA Nos.10, 11, 12 and 13 of 2003 respectively. On dismissal of the same, C.R.P.Nos.34 to 37 of 2004 have been brought forth. So far as these civil revision petitions are concerned, no meaningful relief, at this juncture, could be granted and hence, they automatically become infructuous. Accordingly, C.R.P.Nos.34 to 37 of 2004 are disposed of. No costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1.The District Munsif,
(Rent Controller),
Sirkali.
2.The Principal Subordinate Judge
(Appellate Authority),
Mayiladuthurai.

Copy to

The Section Officer,
VR Section,
High Court, Madras.

5 ccs to Mr.S. Sounthar, Advocate, Sr. 48097, 48101
3 cc to Mr.A. Muthukumar, Advocate, Sr. 47775 and 47776

C.R.P.NPD.NOs.1918 to
1921 OF 2003, 34 TO 37
AND 256 TO 259 OF 2004

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